

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

TERESA MCSHEERY,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

)
) Case No. DEMO-97-0005
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)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD
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I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held in the "R" Building Training Room at the Washington Corrections Center for Women in Gig Harbor, Washington, on August 4 and 5, 1999. NATHAN S. FORD Jr., Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Teresa McSheery was present and was represented by Mark S. Lyon, General Counsel for the Washington Public Employees Association. Respondent Department of Corrections was represented by Robert W. Kosin, Assistant Attorney General.

1.3 **Protective Order and Sealing of the Tape Recorded Record.** In accordance with the oral order of the Board on August 5, 1999, the entire taped record of the proceedings is sealed.

1.4 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty, gross misconduct, and willful violation of the published employing agency or department of personnel rules or regulations. Respondent alleged that while Appellant was the Mail

1 Room/Property Room Sergeant, she failed to process numerous items of mail and that while
2 Appellant was Relief Sergeant, she failed to carry out her duties in a professional manner, failed to
3 treat an inmate with respect and dignity, failed to create a safe, positive and productive work
4 environment, and failed to act as a positive role model for her subordinates.

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6 1.5 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
7 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.
8 School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services,
9 PAB No. D93-053 (1994); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

11 II. FINDINGS OF FACT

12 2.1 Appellant Teresa McSheery is a Correctional Officer and a permanent employee for
13 Respondent Department of Corrections (DOC) at the Washington Corrections Center for Women
14 (WCCW). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules
15 promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the
16 Personnel Appeals Board on February 3, 1997.

17
18 2.2 By letter dated January 29, 1997, Respondent demoted Appellant from a Correctional
19 Sergeant to a Correctional Officer, effective February 13, 1997. The letter charged Appellant with
20 neglect of duty, gross misconduct, and willful violation of the published employing agency or
21 department of personnel rules or regulations. Respondent alleged that when Appellant was the Mail
22 Room/Property Room Sergeant, she failed to deliver, document and process various pieces of
23 inmate mail and failed to appropriately process approximately 300 stamps. In addition, Respondent
24 alleged that on October 4, 1996, while Appellant was the Relief Sergeant, she used inappropriate
25 language and inflammatory tactics when responding to an incident involving inmate D.C., failed to
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1 follow the department's Use of Force policy during her interactions with inmate D.C., and failed to
2 call for sufficient back-up and apply handcuffs to D.C. in accordance with policy.

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4 2.3 Appellant began her employment as a Correctional Officer with Respondent in 1983. She
5 began her employment as a Correctional Sergeant at WCCW in 1989. During her career with
6 Respondent, Appellant has been provided with training and she has been made aware of her
7 responsibility to comply with agency policies, procedures, field instructions and post orders.

8
9 **Mail Room/Property Room Incident:**

10 2.4 In August 1993, Appellant became the WCCW Mail Room/Property Room Sergeant.
11 Appellant was responsible for managing the mail room and the property room, overseeing the work
12 of staff, ensuring that regulations, policies and field instructions were followed, and ensuring that
13 incoming and outgoing mail was properly processed in an efficient manner.

14
15 2.5 While she was the Mail Room/Property Room Sergeant, Appellant was given a February 2,
16 1996 letter of reprimand for failing to correct previously identified deficiencies in the Mail
17 Room/Property Room. In addition, Appellant was given a June 13, 1996 letter of reprimand for
18 being insubordinate and disrespectful, was directed to treat others with respect and dignity, cease
19 the use of profanity and comply with department exceptions. Respondent also scheduled Appellant
20 to attend Entry Development Core Program-Phase 1 training in an attempt by Respondent to
21 enhance Appellant's leadership skills.

22
23 2.6 Effective September 3, 1996, Appellant was given an administrative reassignment to a
24 Relief Sergeant position. Appellant had requested this transfer.

1 2.7 After Appellant's transfer, numerous pieces of improperly processed mail were found in
2 Appellant's former work area in the Property Room. Those items included an undelivered legal
3 letter, dated April 17, 1996, authored by inmate K; legal mail for inmate B., dated November 6,
4 1994, that did not have the proper disposition documentation; an undelivered envelope for inmate
5 T., dated March 3, 1995; an unprocessed postage transfer, dated May 14, 1996, with memo from
6 inmate S.; and an envelope containing 300 unprocessed 29 cent stamps.

7
8 2.8 WCCW Field Instruction 590.500 provides that questionable incoming or outgoing mail
9 may be retained for 24 hours to resolve the issue. The Mail Room Sergeant Post Orders provide, in
10 part, that the Sergeant is responsible for training and supervising staff; ensuring all postal
11 regulations, DOC policies, WCCW field instructions and WAC rules are adhered to; following
12 contraband management procedures; and completing all necessary documentation prior to the end
13 of the work period.

14
15 **Incident involving Inmate D.C.:**

16 2.9 Inmate D.C. was housed in F Unit, the segregation unit. During the evening of October 4,
17 1996, D.C. told unit staff that she was hearing voices and that the voices were telling her to hurt
18 herself. D.C. was known to be unpredictable and had a history of attempting to harm herself. Staff
19 interacting with her during the following events did not know whether she would respond favorably
20 or react in a negative or dangerous manner to their attempts to assist her.

21
22 2.10 When unit staff responded to D.C.'s cell, she was threatening to poke herself in the stomach
23 with a pen. Unit staff placed D.C. in handcuffs and moved her to the dayroom until mental health
24 staff could conduct a suicide assessment of her. After D.C. was placed in the dayroom, the
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1 handcuffs were removed, staff left her in the room alone, and her cell was searched for sharp
2 objects.

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4 2.11 While D.C. was alone in the dayroom, she climbed on top of a telephone booth cover. The
5 telephone booth cover was approximately 5 to 6 feet from the floor. Unit staff could observe D.C.
6 through the Plexiglas surrounding the dayroom. When staff saw her on top of the telephone booth
7 cover, staff instructed her to get down. When she failed to comply, unit staff contacted Appellant
8 who was the Relief Sergeant on duty that evening.

9
10 2.12 Appellant responded to F Unit at approximately 9:45 p.m. Shift change was scheduled for
11 10:00 p.m. As the Sergeant responding to the incident, it was Appellant's responsibility to direct
12 staff, ensure the safety of the inmates and staff, and ensure that DOC policies and field instructions
13 were followed.

14
15 2.13 When Appellant arrived at the dayroom, she talked to D.C. Other staff were in the main
16 foyer of F Unit awaiting instructions from Appellant. D.C. was threatening to jump off the
17 telephone booth cover. Appellant instructed D.C. to get down and told her "get your ass off of
18 there, or I'll drag it off." Appellant then placed a mock radio call asking for five Response and
19 Movement officers, a rope and gas. D.C. then agreed to comply with the instructions to get down
20 but she was frightened and asked for staff assistance. Appellant instructed staff to enter the
21 dayroom and help D.C. get down from the telephone booth cover. Neither Appellant nor staff
22 utilized protective gear during their interactions with D.C.

1 2.14 A nurse assessed D.C. and the decision was made to return her to her cell. D.C. was placed
2 in handcuffs and taken back to her cell. D.C.'s handcuffs were removed once she was back in her
3 cell. Staff left D.C. in her cell and went about their assigned duties. Appellant left the area.

4
5 2.15 Later, D.C. called unit staff back to her cell. D.C. said that she was afraid, she did not want
6 to be alone in the dark, she did not feel she could keep herself safe, she threatened to hurt herself,
7 and she asked to go to the close observation unit. Unit staff attempted to calm D.C., but were
8 unsuccessful. Appellant was again called to the unit.

9
10 2.16 When Appellant reported to the unit, she went to D.C.'s cell. D.C. was jumping on the bed
11 and Appellant told her to go ahead and jump, she was watching. Appellant returned to the control
12 booth and instructed CO Marie Cagle, to go to D.C.'s cell and talk to her. When CO Cagle arrived
13 at the cell, D.C. had climbed onto the desk and was threatening to throw herself to the floor.
14 Appellant returned to the cell, tried to reason with D.C. and attempted to coax her off the desk.
15 Eventually, D.C. agreed and Appellant and CO Cagle entered the cell and helped D.C. off the desk.

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17 2.17 After D.C. was off the desk, CO Cagle began to place her in handcuffs. Appellant told CO
18 Cagle that handcuffs were not necessary and instructed CO Cagle to remove the handcuffs.
19 Appellant then left the cell to call for backup from the Response and Movement (R&M) officers,
20 leaving CO Cagle alone in the cell with D.C. By the time R&M arrived, D.C. was back on the desk.
21 Staff assisted D.C. down from the desk, handcuffed her and escorted her to the G-1, close
22 observation unit.

23
24 2.18 When spontaneous events such as the incidents with D.C. occur, staff rely on the officer in
25 charge for directions. In this case, the officer in charge was Appellant. The officer in charge is

1 responsible for following DOC policies and the Use of Force Continuum, providing instructions and
2 verbal commands during the incident, and ensuring the safety of staff and the inmates. Whenever
3 an inmate is threatening harm, a risky and potentially dangerous situation exists. In this instance,
4 D.C. responded favorably to staff intervention, however, had she not, the situation could have
5 escalated and could have resulted in a much different outcome.

6
7 2.19 Tina Coberly was one of the unit staff on duty when the incidents with D.C. occurred. She
8 had the unit video camera but she did not video tape the incidents. Appellant instructed CO
9 Coberly to keep the camera on-site in case it became a use of force situation. CO Coberly was
10 waiting for directions from Appellant to begin video taping because Appellant was in charge. The
11 officer in charge is responsible for directing staff to video tape the incidents. In addition, the officer
12 in charge is responsible for directing staff to put on protective gear and for calling for R&M
13 backup. Appellant did not called for backup, did not directed staff to video tape the incident and did
14 not instruct staff to utilize protective gear.

15
16 2.20 The DOC Employee Handbook requires employees to subscribe to a code of respect for
17 dignity of human beings and a commitment to professional and compassionate service; be
18 understanding and respectful of inmates; serve inmates with appropriate concern for inmates'
19 welfare; and conduct themselves and perform their duties in a safe manner. The handbook prohibits
20 the use of profanity or inflammatory remarks.

21
22 2.21 WCCW Field Instruction 410.200 provides that any physical force used to cause an inmate
23 to respond to staff orders will be limited to the minimum amount necessary to control the situation.
24 Prior to using physical force, staff is to give direct verbal orders to the inmate. Physical force is

1 authorized to prevent self-mutilation or to prevent an inmate from maiming herself and is used only
2 if the inmate fails to comply with staff's verbal orders.

3
4 2.22 Field Instruction 410.200 also provides that unless extraordinary circumstances prevent it,
5 use of force incidents are required to be video taped. If passive counter measures fail to resolve a
6 situation, active counter measures are used. Passive counter measures include talking to and
7 reasoning with an inmate, showing force with the presence of additional staff, and requesting
8 assistance. Active counter measures include taking hold of an inmate's arm or clothing and
9 escorting her out of the area.

10
11 2.23 The DOC Use of Force Continuum sets forth the sequence of actions to be taken to resolve
12 emergency situations. When passive counter measures are used, the Use of Force Continuum
13 requires video taping of the incident and showing force. Active counter measures include escort
14 techniques and control and restraint techniques.

15
16 2.24 WCCW Field Instruction 420.250 provides that restraints, including handcuffs, are to be
17 used to prevent an inmate from self-injury and for movement of an inmate within the segregation
18 unit.

19
20 2.25 In determining whether misconduct occurred, Superintendent Payne reviewed the incident
21 reports, the results of the Employee Conduct Report fact finding investigation, and held an
22 administrative hearing with Appellant and her representative to allow Appellant an opportunity to
23 respond to the charges. Superintendent Payne determined that misconduct occurred and that
24 Appellant had used inappropriate language toward D.C. which was a violation of policy, contrary to
25 the expectation of professionalism that is taught to employees, and contrary to the directions given
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1 to Appellant in her previous corrective action. In addition, Superintendent Payne determined that
2 Appellant violated policy when she failed to have the incidents with D.C. video taped and failed to
3 follow the Use of Force Continuum and use of force procedures which put the safety of staff and the
4 inmate at risk. Superintendent Payne concluded that Appellant's actions rose to the level of gross
5 misconduct because she intentionally used threatening, inflammatory language and profanity
6 towards D.C. which could have provoked the inmate during what was already a potentially
7 dangerous situation. She concluded that Appellant's actions constituted a neglect of her duty to
8 conduct herself professionally, in part, because she used profanity toward D.C., failed to video tape
9 the incidents, failed to provide direction to staff, and failed to follow policies. In regard to the Mail
10 Room/Property Room incidents, Superintendent Payne concluded that Appellant neglected her duty
11 by failing to ensure that all mail was handled properly and that she failed to abide by policies and
12 procedures for processing mail. As a result, Superintendent Payne determined that Appellant's
13 actions created a loss of confidence in her ability to function as a supervisor and concluded that a
14 demotion to a non-supervisory position was the appropriate disciplinary sanction.

15 16 **III. ARGUMENTS OF THE PARTIES**

17 3.1 Respondent argues that in regard to the Mail Room/Property Room incidents, there was a lot
18 of finger pointing as to who was responsible for the mishandled items. However, Respondent
19 alleges that as the Sergeant, it was ultimately Appellant's responsibility to ensure that the items
20 were properly processed and she failed to do so. Respondent contends that the crux of the
21 discipline was the incidents in F Unit. Respondent argues that Appellant conducted herself
22 unprofessionally toward inmate D.C.; failed to follow policies; acted contrary to the training she
23 had received; placed herself, other staff, and the inmate in a potentially dangerous situation and at
24 risk of harm; and placed the institution at an increased risk of litigation. Respondent contends that
25 Appellant's actions, including her use of extremely poor judgment in dealing with an unpredictable
26 inmate and her lack of direction to staff, demonstrated her inability to function effectively in a

1 supervisory capacity. Therefore, Respondent asserts that Appellant's demotion to a non-
2 supervisory position was appropriate.

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4 3.2 Appellant asserts that Respondent failed to prove that she mishandled mail or stamps.
5 Appellant acknowledges that she had a difficult working relationship with her subordinate in the
6 Property Room and asserts that she had no knowledge of some of the items that were found after
7 she left her position in the Mail Room/Property Room. She contends that she processed the other
8 items, including the stamps, in compliance with the policies in effect at that time. In regard to the
9 incidents in F Unit, Appellant asserts that the potential for harm was there but that there was no
10 easy answer for how to deal with D.C. Appellant contends that none of the staff present during
11 these incidents considered it a use of force situation and that because use of force was not
12 necessary, Appellant appropriately employed passive counter measures. Appellant contends that
13 video taping is not required when passive counter measures are used. Appellant asserts that she had
14 a rapport with the inmate and that the outcome was good because of her split second judgment call.
15 Appellant argues that she is competent to exercise judgment in a supervisory position, asserts that
16 her performance evaluations support her ability to function as a supervisor, and contends that the
17 disciplinary sanction of a permanent demotion to a non-supervisory position is too severe.

18 19 **IV. CONCLUSIONS OF LAW**

20 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
21 herein.

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23 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
24 the charges upon which the action was initiated by proving by a preponderance of the credible
25 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
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1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
2 Corrections, PAB No. D82-084 (1983).

3
4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
6 of Social & Health Services, PAB No. D86-119 (1987).

7
8 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
9 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

10
11 4.5 Willful violation of published employing agency or institution or Personnel Resources
12 Board rules or regulations is established by facts showing the existence and publication of the rules
13 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
14 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
15 Health Services, PAB No. D93-053 (1994).

16
17 4.6 Respondent has met its burden of proof that Appellant was aware of and had a duty to
18 comply with the policies, directives, field instructions, post orders and expectations for her
19 positions as the Mail Room/Property Room Sergeant and as the Relief Sergeant. Appellant failed to
20 fulfill her duty and comply with the policies, field instructions and post orders when she failed to
21 ensure that staff properly processed, documented and disposed of the mail and stamps in question.
22 Appellant failed to fulfill her duty and comply with policies, directives and expectations when she
23 used profanity toward D.C. Appellant failed to fulfill her duty and comply with policies, directives,
24 field instructions, post orders and expectations when she failed to follow the Use of Force
25 Continuum in dealing with a potentially dangerous situation with an unpredictable inmate, failed to
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1 ensure the safety of staff and the inmate, failed to call for backup and failed to give staff directions.
2 Regardless of whether this was a use of force situation, the Use of Force Continuum clearly states
3 that passive counter measures are to be video taped, yet Appellant's direction to CO Cagle was
4 contrary to this directive. In addition, D.C. was threatening to harm herself and WCCW field
5 instructions authorize the use of restraints, including handcuffs, to prevent inmates from self-injury,
6 yet Appellant's direction to CO Coberly was contrary to field instructions. In these incidents,
7 Appellant did not demonstrate the qualities of a capable supervisor.

8
9 4.7 Given the potentially dangerous nature of the situation with D.C. and Appellant's lack of
10 good judgment, which not only put the inmate at risk but also risked the safety of staff and the
11 security of the institution, Respondent has met its burden of proof that Appellant's actions rose to
12 the level of gross misconduct. Appellant's poor judgment in dealing with D.C., jeopardized the
13 ability of the agency to ensure the safety and security of staff, inmates and the institution.

14
15 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
16 the facts and circumstances, including the seriousness and circumstances of the offenses. The
17 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
18 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
19 program. An action does not necessarily fail if one cause is not sustained unless the entire action
20 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

21
22 4.9 The Mail Room/Property Room incidents alone would not warrant a demotion. However,
23 this incident demonstrates Appellant's pattern of behavior and her failure to comply with directives,
24 field instructions, policies and expectations. The incidents in F Unit are at the crux of this
25 disciplinary action. Under the proven facts and circumstances of this case and considering the
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1 potential danger of the situation with D.C. and the egregious nature of Appellant's misconduct, the
2 disciplinary sanction of demotion is appropriate. Therefore, Appellant's appeal should be denied.

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V. ORDER

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NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Teresa McSheery is denied.

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DATED this _____ day of _____ 1999.

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WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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